

**OHIO**

**SENATE**

**JOURNAL**

TUESDAY, MARCH 1, 2005

TWENTY-THIRD DAY  
Senate Chamber, Columbus, Ohio  
**Tuesday, March 1, 2005, 1:30 p.m.**

The Senate met pursuant to adjournment.

Prayer was offered by Reverend Abeoseh Flemister, Trinity Episcopal Church, Columbus, Ohio, followed by the Pledge of Allegiance to the Flag.

The journal of the last legislative day was read and approved.

**REPORTS OF REFERENCE AND BILLS FOR SECOND  
CONSIDERATION**

Senator Schuring reports for the Standing Committee on Reference, recommending that the following bills, standing in order for second consideration, be referred to committee as recommended:

**H. B. No. 65**-Representatives Schaffer, Beatty, Calvert, Cassell, Chandler, Combs, Daniels, DeBose, Distel, Domenick, C. Evans, D. Evans, Fende, Flowers, Gibbs, Kearns, Mason, McGregor, Miller, Otterman, T. Patton, Seitz, Setzer, Uecker, Willamowski, Williams.

To amend section 125.021 of the Revised Code to allow the Industrial Commission to make contracts concerning telecommunications and computer services and to make appropriations for the Industrial Commission for the biennium beginning July 1, 2005, and ending June 30, 2007, and to provide authorization and conditions for the operation of Commission programs.

To the Committee on Insurance, Commerce and Labor.

**H. B. No. 67**-Representatives Schaffer, Beatty, Flowers, Hartnett, Miller, Strahorn, Barrett, Buehrer, Calvert, Cassell, Chandler, Daniels, Distel, Domenick, C. Evans, D. Evans, Fende, Gibbs, Hughes, Kearns, Mason, McGregor, Otterman, Seitz, Setzer, Webster, Williams.

To amend sections 121.08, 4121.12, 4121.121, 4121.37, 4123.511, 4167.02, 4167.06, 4167.07, 4167.08, 4167.09, 4167.10, 4167.11, 4167.12, 4167.14, 4167.15, 4167.16, 4167.17, 4167.19, and 4167.27, to enact section 4121.48, and to repeal section 4167.18 of the Revised Code to transfer the Public Employees Risk Reduction Program and the Occupational Safety and Health Act On-site Consultation Program from the Department of Commerce to the Bureau of Workers' Compensation, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2005, and ending June 30, 2007, and to provide authorization and conditions for the operation of

the Bureau's programs.

To the Committee on Insurance, Commerce and Labor.

**S. B. No. 76**-Senators Cates, Gardner, Jacobson, Padgett, Mumper, Clancy, Fedor.

To amend section 2903.13 of the Revised Code to make assault on any school employee a felony of the fifth degree.

To the Committee on Judiciary - Criminal Justice.

**S. B. No. 77**-Senator Grendell.

To amend sections 3506.05 and 3506.10 and to enact section 3506.20 of the Revised Code to permit direct recording electronic voting machines certified for use in Ohio on January 1, 2005, to continue to be used in this state if they are modified to meet the requirements of the Help America Vote Act of 2002 and, when technologically and economically feasible, modified to include a voter verified paper audit trail.

To the Committee on State and Local Government and Veterans' Affairs.

**S. B. No. 78**-Senators Grendell, Cates.

To amend sections 121.02, 121.03, 121.05, 121.06, 121.07, 121.11, 121.13, 121.15, and 121.17, to enact new section 121.04, and to repeal section 121.04 of the Revised Code to reorganize the executive branch of state government.

To the Committee on State and Local Government and Veterans' Affairs.

**S. B. No. 79**-Senators Cates, Schuler, Brady, Padgett, Miller, Clancy, Spada.

To amend sections 511.27, 1545.21, 1901.07, 3501.01, 3501.02, 3501.17, 3503.16, 3505.01, 3505.32, 3509.01, 3509.03, 3509.05, 3511.02, 3511.04, 3511.11, 3513.01, 3513.05, 3513.12, 3513.121, 3513.151, 3513.262, 3513.30, and 5705.23 of the Revised Code to require primary elections, including those held in presidential election years, to be held on the first Tuesday after the first Monday in May.

To the Committee on State and Local Government and Veterans' Affairs.

YES - 5: MARK MALLORY, JEFF JACOBSON, C. J. PRENTISS,  
BILL HARRIS, J. KIRK SCHURING.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Said bills were considered a second time and referred to committee as recommended.

### REPORTS OF STANDING AND SELECT COMMITTEES

Senator Schuring submitted the following report:

The standing committee on Rules to which were referred the appointments by the Governor of:

**Norman I. Barron**, Republican, from Cincinnati, Hamilton County, Ohio, as the Chair of the State Racing Commission for term beginning January 14, 2005 and ending at the close of business March 31, 2005, replacing Scott Borgemenke, who resigned.

**John R. Beagle**, Independent, from Monroe, Butler County, Ohio, as a Member of the Financial Planning and Supervision Commission for the City of Monroe for a term beginning January 28, 2005 and continuing at the pleasure of the Governor, replacing Charles Gall, who resigned.

**Randi W. Cohen**, Democrat, from Columbus, Franklin County, Ohio, as a Member of the Counselor, Social Worker, and Marriage and Family Therapist Board for a term beginning December 27, 2004 and ending at the close of business October 10, 2007, replacing Michael Davis, whose term expired.

**Donna J. Conley**, Republican, from Westerville, Franklin County, Ohio, as a Member of the Council on Alcohol and Drug Addiction Services for a term beginning December 27, 2004 and ending at the close of business July 31, 2005, replacing Juliet C. Rowland, who resigned.

**Edward J. DeVillez**, Independent, from Oxford, Butler County, Ohio, as a Member of the Ohio Advisory Council for the Aging for a term beginning December 3, 2004 and ending at the close of business November 22, 2007, replacing Mary M. Wolff, whose term expired.

**Susan N. Huss**, Independent, from Luckey, Wood County, Ohio, as a Member of the Counselor, Social Worker, and Marriage and Family Therapist Board

for a new term beginning December 27, 2004 and ending at the close of business October 10, 2007.

**Mark E. Horwitz**, Republican, from Dayton, Montgomery County, Ohio, as a Member of the State Board of Orthotics, Prosthetics, and Pedorthics for a term beginning December 17, 2004 and ending at the close of business December 6, 2007.

**John A. Kubincanek**, Republican, from North Ridgeville, Lorain County, Ohio, as a Member of the State Board of Emergency medical Services for a term beginning December 17, 2004 and ending at the close of business November 12, 2005, replacing Darla Cooper, who resigned.

**Donelda A. McWilliams**, Republican, from Defiance, Defiance County, Ohio, as a Member of the Ohio Advisory Council for the Aging for a new term beginning December 3, 2004 and ending at the close of business November 22, 2007.

**Darlene R. Ondercin**, Republican, from Sheffield Village, Lorain County, Ohio, as a Member of the Financial Planning and Supervision Commission for the Sheffield-Sheffield Lake School District for a term beginning January 26, 2005 and continuing at the pleasure of the Governor.

**Maritza, L. Perez**, Republican, from Strongsville, Cuyahoga County, Ohio, as a Member of the Commission on Hispanic/Latino Affairs for a new term beginning December 17, 2004 and ending at the close of business October 7, 2007.

**Barbara E. Riley**, from Columbus, Franklin County, Ohio, as Director of the Ohio Department of Job and Family Services for a term beginning December 18, 2004 and continuing at the pleasure of the Governor.

**Ramona R. Reyes**, Independent, from Columbus, Franklin County, Ohio, as a Member of the Commission on Hispanic/Latino Affairs for a term beginning December 17, 2004 and ending at the close of business October 7, 2007, replacing Donna Alvarado, whose term expired.

**Richard Romero**, Democrat, from Lorain, Lorain County, Ohio, as a Member of the Commission on Hispanic/Latino Affairs for a new term beginning December 17, 2004 and ending at the close of business October 7, 2007.

**Winifred O. Stone**, Democrat, from Bowling Green, Wood County, Ohio, as a Member of the Ohio Advisory Council for the Aging for a new term beginning December 3, 2004 and ending at the close of business November 22, 2007.

**Theresa Cluse-Tolar**, Democrat, from Toledo, Lucas County, Ohio, as a Member of the Counselor, Social Worker, and Marriage and Family Therapist Board for a new term beginning December 27, 2004 and ending at the close of business October 10, 2007.

**Joseph D. Williams**, Republican, from Junction City, Perry County, Ohio, as a Member of the Counselor, Social Worker, and Marriage and Family Therapist Board for a new term beginning December 27, 2004 and ending at the close of business October 10, 2007.

**Thomas T. K. Zung**, Independent, from Cleveland, Cuyahoga County, Ohio, as a Member of the Ohio Advisory Council for the Aging for a new term beginning December 3, 2004 and ending at the close of business November 22, 2007.

Having had the same under consideration, reports back the recommendation that the Senate advise and consent to said appointments.

YES - 11: BILL HARRIS, JEFF JACOBSON, RANDY GARDNER, ROBERT F. SPADA, STEPHEN C. AUSTRIA, JAY HOTTINGER, J. KIRK SCHURING, ROBERT F. HAGAN, TERESA FEDOR, MARK MALLORY, C. J. PRENTISS.

NO - 0.

The question being, "Shall the Senate advise and consent to the appointments by the Governor?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Harris
Hottinger	Jacobson	Jordan	Mallory
Miller	Mumper	Niehaus	Padgett
Prentiss	Roberts	Schuler	Schuring
Spada	Wachtmann	Wilson	Zurz-32.

So the Senate advised and consented to said appointments.

### **BILLS FOR THIRD CONSIDERATION**

**S. B. No. 19**-Senators Schuler, Wachtmann, Mumper, Clancy, Hagan, Goodman.

To amend section 2317.02 and to enact section 2305.2341 of the Revised Code to make the testimonial privilege against disclosure of certain communications applicable to critical incident stress management (CISM) team members and to provide CISM team members with immunity against tort or other civil liability arising from actions or omissions during debriefing sessions, was considered the third time.

The question being, "Shall the bill, **S. B. No. 19**, pass?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Harris
Hottinger	Jacobson	Jordan	Mallory
Miller	Mumper	Niehaus	Padgett
Prentiss	Roberts	Schuler	Schuring
Spada	Wachtmann	Wilson	Zurz-32.

So the bill passed.

The question being, "Shall the title be agreed to?"

Senator Schuler moved to amend the title as follows:

Add the names: "Austria, Roberts, Padgett, Niehaus."

The question being, "Shall the motion be agreed to?"

The motion was agreed to and the title so amended.

**H. B. No. 10**-Representatives Schneider, Seitz, Setzer, C. Evans, Allen, Book, Daniels, Gibbs, Hagan, Mason, S. Patton, G. Smith, S. Smith, J. Stewart, White, Barrett, Beatty, Blasdel, Blessing, Bulp, Buehrer, Calvert, Carano, Carmichael, Cassell, Chandler, Coley, Collier, Combs, Core, DeBose, Distel, Dolan, Domenick, Driehaus, D. Evans, Faber, Fende, Fessler, Flowers, Gilb, Hartnett, Hoops, Hughes, Kearns, Key, Koziura, Law, Martin, Mitchell, Oelslager, Otterman, T. Patton, Perry, Peterson, Raussen, Redfern, Reidelbach, Reinhard, Schaffer, Schlichter, Seaver, Skindell, D. Stewart, Sykes, Taylor, Uecker, Ujvagi, Wagoner, Walcher, Widener, Willamowski, Williams, Wolpert Senator Wachtmann.

To amend sections 145.384, 145.46, 742.3711, 3307.60, 3309.46, and 5505.162 of the Revised Code regarding an election by a retirant of one of the state's public retirement systems who has married or remarried to change the plan under which a retirement benefit is paid, was considered the third time.

The question being, "Shall the bill, **H. B. No. 10**, pass?"

Senator Wachtmann moved to amend as follows:

Delete lines 10 through 116 and insert:

**"Sec. 145.384.** (A) As used in this section, "PERS retirant" means a PERS retirant who is not subject to division (C) of section 145.38 of the Revised Code. For purposes of this section, "PERS retirant" also includes both of the

following:

(1) A member who retired under section 145.383 of the Revised Code;

(2) A retirant whose retirement allowance resumed under section 145.385 of the Revised Code.

(B)(1) An other system retirant or PERS retirant who has made contributions under section 145.38 or 145.383 of the Revised Code or, in the case of a retirant described in division (A)(2) of this section, section 145.47 of the Revised Code may file an application with the public employees retirement system to receive either a benefit, as provided in division (B)(2) of this section, or payment of the retirant's contributions made under those sections, as provided in division (H) of this section.

(2) A benefit under this section shall consist of an annuity having a reserve equal to the amount of the retirant's accumulated contributions for the period of employment, other than the contributions excluded pursuant to division (B)(4)(a) or (b) of section 145.38 of the Revised Code, and an amount of the employer's contributions determined by the board.

(a) Unless, as described in division (I) of this section, the application is accompanied by a statement of the spouse's consent to another form of payment or the board waives the requirement of spousal consent, a PERS retirant or other system retirant who is married at the time of application for a benefit under this section shall receive a monthly annuity under which the actuarial equivalent of the retirant's single life annuity is paid in a lesser amount for life and one-half of the lesser amount continues after the retirant's death to the surviving spouse.

(b) A PERS retirant or other system retirant who is not subject to division (B)(2)(a) of this section shall elect either to receive the benefit as a monthly annuity or a lump sum payment discounted to the present value using a rate of interest determined by the board. A retirant who elects to receive a monthly annuity shall select one of the following as the plan of payment:

(i) The retirant's single life annuity;

(ii) The actuarial equivalent of the retirant's single life annuity in an equal or lesser amount for life and continuing after death to a surviving beneficiary designated at the time the plan of payment is selected.

If a retirant who is eligible to select a plan of payment under division (B)(2)(b) of this section fails to do so, the benefit shall be paid as a monthly annuity under the plan of payment specified in rules adopted by the public employees retirement board.

(c) Notwithstanding divisions (B)(2)(a) and (b) of this section, if a monthly annuity would be less than twenty-five dollars per month, the retirant shall receive a lump sum payment.

(C)(1) The death of a spouse or other designated beneficiary under a plan of payment described in division (B)(2) of this section cancels that plan of



payment. The PERS retiree or other system retiree shall receive the equivalent of the retiree's single life annuity, as determined by the board, effective the first day of the month following receipt by the board of notice of the death.

(2) On divorce, annulment, or marriage dissolution, a PERS retiree or other system retiree receiving a benefit described in division (B)(2) of this section under which the beneficiary is the spouse may, with the written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel the plan and receive the equivalent of the retiree's single life annuity as determined by the board. The election shall be made on a form provided by the board and shall be effective the month following its receipt by the board.

(D) Following a marriage or remarriage, a PERS retiree or other system retiree who is receiving a benefit described in division (B)(2)(b)(i) of this section may elect a new plan of payment under division (B)(2)(b) of this section based on the actuarial equivalent of the retiree's single life annuity as determined by the board. ~~The~~

If the marriage or remarriage occurs on or after the effective date of this amendment, the election must be made not later than one year after the date of the marriage or remarriage.

The plan elected under this division shall be effective ~~the first day of the month following~~ on the date of receipt by the board of an application on a form approved by the board, but any change in the amount of the benefit shall commence on the first day of the month following the effective date of the plan.

(E) A benefit payable under division (B)(2) of this section shall commence on the latest of the following:

(1) The last day for which compensation for all employment subject to section 145.38, 145.383, or 145.385 of the Revised Code was paid;

(2) Attainment by the PERS retiree or other system retiree of age sixty-five;

(3) If the PERS retiree or other system retiree was previously employed under section 145.38, 145.383, or 145.385 of the Revised Code and is receiving or previously received a benefit under this section, completion of a period of twelve months since the effective date of the last benefit under this section;

(4) A date specified by the retiree.

(F)(1) If a PERS retiree or other system retiree dies while employed in employment subject to section 145.38, 145.383, or 145.385 of the Revised Code, a lump sum payment calculated in accordance with division (B)(2) of this section shall be paid to the retiree's beneficiary under division (G) of this section.

(2) If at the time of death a PERS retiree or other system retiree receiving a monthly annuity under division (B)(2)(b)(i) of this section has

received less than the retirant would have received as a lump sum payment, the difference between the amount received and the amount that would have been received as a lump sum payment shall be paid to the retirant's beneficiary under division (G) of this section.

(3) If a beneficiary receiving a monthly annuity under division (B)(2) of this section dies and, at the time of the beneficiary's death, the total of the amounts paid to the retirant and beneficiary are less than the amount the retirant would have received as a lump sum payment, the difference between the total of the amounts received by the retirant and beneficiary and the amount that the retirant would have received as a lump sum payment shall be paid to the beneficiary's estate.

(G) A PERS retirant or other system retirant employed under section 145.38, 145.383, or 145.385 of the Revised Code may designate one or more persons as beneficiary to receive any benefits payable under division (B)(2)(b) of this section due to death. The designation shall be in writing duly executed on a form provided by the public employees retirement board, signed by the PERS retirant or other system retirant, and filed with the board prior to death. The last designation of a beneficiary revokes all previous designations. The PERS retirant's or other system retirant's marriage, divorce, marriage dissolution, legal separation, withdrawal of account, birth of a child, or adoption of a child revokes all previous designations. If there is no designated beneficiary, the beneficiary is the beneficiary determined under division (D) of section 145.43 of the Revised Code. If any benefit payable under this section due to the death of a PERS retirant or other system retirant is not claimed by a beneficiary within five years after the death, the amount payable shall be transferred to the income fund and thereafter paid to the beneficiary or the estate of the PERS retirant or other system retirant on application to the board.

(H)(1) A PERS retirant or other system retirant who applies under division (B)(1) of this section for payment of the retirant's contributions and is unmarried or is married and, unless the board has waived the requirement of spousal consent, includes with the application a statement of the spouse's consent to the payment, shall be paid the contributions made under section 145.38 or 145.383 of the Revised Code or, in the case of a retirant described in division (A)(2) of this section, section 145.47 of the Revised Code, plus interest as provided in section 145.471 of the Revised Code, if the following conditions are met:

(a) The retirant has not attained sixty-five years of age and has terminated employment subject to section 145.38, 145.383, or 145.385 of the Revised Code for any cause other than death or the receipt of a benefit under this section.

(b) Three months have elapsed since the termination of the retirant's employment subject to section 145.38, 145.383, or 145.385 of the Revised Code, other than employment exempted from contribution pursuant to section 145.03 of the Revised Code.

(c) The retirant has not returned to public service, other than service exempted from contribution pursuant to section 145.03 of the Revised Code, during the three-month period.

(2) Payment of a retirant's contributions cancels the retirant's right to a benefit under division (B)(2) of this section.

(I) A statement of a spouse's consent under division (B)(2) of this section to the form of a benefit or under division (H) of this section to a payment of contributions is valid only if signed by the spouse and witnessed by a notary public. The board may waive the requirement of spousal consent if the spouse is incapacitated or cannot be located, or for any other reason specified by the board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

(J) No amount received under this section shall be included in determining an additional benefit under section 145.323 of the Revised Code or any other post-retirement benefit increase."

After line 869, insert:

**"Section 3.** That the versions of sections 145.46, 742.3711, 3307.60, 3309.46, and 5505.162 of the Revised Code that are scheduled to take effect on October 27, 2006, be amended to read as follows:

**"Sec. 145.46.** (A) A retirement allowance calculated under section 145.33, 145.331, or 145.34 of the Revised Code shall be paid as provided in this section. If the member is eligible to elect a plan of payment under this section, the election shall be made on a form provided by the public employees retirement board. A plan of payment elected under this section shall be effective only if approved by the board, which shall approve it only if it is certified by an actuary engaged by the board to be the actuarial equivalent of the retirement allowance calculated under section 145.33, 145.331, or 145.34 of the Revised Code.

(B)(1)(a) Except as provided in divisions (B)(1)(b) and (c) of this section, a member who retires under section 145.32, 145.331, or 145.34 of the Revised Code shall receive a retirement allowance under "plan A," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 145.33, 145.331, or 145.34 of the Revised Code in a lesser amount payable for life and one-half of such allowance continuing after death to the member's surviving spouse for the life of the spouse.

(b) A member may receive a retirement allowance under a plan of payment other than "plan A" if either of the following is the case:

(i) The member is not married or either the member's spouse consents in writing to the member's election of a plan of payment other than "plan A" or the board waives the requirement that the spouse consent;

(ii) A plan of payment providing for payment in a specified portion of the

allowance continuing after the member's death to a former spouse is required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding division of marital property prior to the effective date of the member's retirement.

(c) If a member is subject to division (B)(1)(b)(ii) of this section and the board has received a copy of the order described in that division, the board shall accept the member's election of a plan of payment under this section only if the member complies with both of the following:

(i) The member elects a plan of payment that is in accordance with the order described in division (B)(1)(b)(ii) of this section.

(ii) If the member is married, the member elects "plan F" and designates the member's current spouse as a beneficiary under that plan unless that spouse consents in writing to not being designated a beneficiary under any plan of payment or the board waives the requirement that the current spouse consent.

(2) An application for retirement shall include an explanation of all of the following:

(a) That, if the member is married, unless the spouse consents to another plan of payment or there is a court order dividing marital property issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property that provides for payment in a specified amount, the member's retirement allowance will be paid under "plan A," which consists of the actuarial equivalent of the member's retirement allowance in a lesser amount payable for life and one-half of the allowance continuing after death to the surviving spouse for the life of the spouse;

(b) A description of the alternative plans of payment, including all plans described in divisions (B)(2) and (3) of this section, available with the consent of the spouse;

(c) That the spouse may consent to another plan of payment and the procedure for giving consent;

(d) That consent is irrevocable once notice of consent is filed with the board.

Consent shall be valid only if it is signed, in writing, and witnessed by a notary public. The board may waive the requirement of consent if the spouse is incapacitated or cannot be located or for any other reason specified by the board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

(3) A member eligible to elect to receive the member's retirement allowance under a plan of payment other than "plan A" shall receive the member's retirement allowance under the plan described in division (B)(4) of this section or one of the following plans:

(a) "Plan B," which shall consist of an allowance determined under

section 145.33, 145.331, or 145.34 of the Revised Code;

(b) "Plan C," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 145.33, 145.331, or 145.34 of the Revised Code in a lesser amount payable for life and one-half or some other portion of the allowance continuing after death to the member's sole surviving beneficiary designated at the time of the member's retirement, provided that the amount payable to the beneficiary does not exceed the amount payable to the member;

(c) "Plan D," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 145.33, 145.331, or 145.34 of the Revised Code in a lesser amount payable for life and continuing after death to a surviving beneficiary designated at the time of the member's retirement;

(d) "Plan E," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 145.33, 145.331, or 145.34 of the Revised Code in a lesser amount payable for a certain period from the member's retirement date as elected by the member and approved by the retirement board, and on the member's death before the expiration of that certain period the member's lesser retirement allowance payable for the remainder of that period to the member's surviving designated beneficiary nominated by written designation filed with the retirement board.

Should the nominated beneficiary designated in writing die prior to the expiration of the guarantee period, then for the purpose of completing payment for the remainder of the guarantee period, the present value of such payments shall be paid to the estate of the beneficiary last receiving.

(e) "Plan F," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 145.33, 145.331, or 145.34 of the Revised Code in a lesser amount payable to the retirant for life and some portion of the lesser amount continuing after death to two, three, or four surviving beneficiaries designated at the time of the member's retirement. The portion of the lesser allowance that continues after the member's death shall be allocated among the beneficiaries at the time of the member's retirement. If the member elects this plan as required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property and compliance with the court order requires the allocation of a portion less than ten per cent to any beneficiary, the member shall allocate a portion less than ten per cent to that beneficiary in accordance with that order. In all other circumstances, no portion allocated under this plan of payment shall be less than ten per cent. The total of the portions allocated shall not exceed one hundred per cent of the member's lesser allowance.

(4)(a) Beginning on a date selected by the retirement board, which shall be not later than July 1, 2004, a member may elect to receive a retirement allowance under a plan of payment consisting of both a lump sum in an amount

the member designates that constitutes a portion of the member's retirement allowance under a plan described in division (B) of this section and the remainder as a monthly allowance under that plan.

The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

(b) The lump sum designated by a member shall be not less than six times and not more than thirty-six times the monthly amount that would be payable to the member under the plan of payment elected under division (B)(4)(a) of this section had the lump sum not been elected and shall not result in a monthly allowance that is less than fifty per cent of that monthly amount.

(5) An election under division (B)(3) or (4) of this section shall be made at the time the member makes application for retirement.

(6) A member eligible to elect to receive the member's retirement allowance under a plan of payment other than "plan A" because the member is unmarried who fails to make an election on retirement shall receive the member's retirement allowance under "plan B."

(C) If the retirement allowances, as a single life annuity or payment plan as provided in this section, due and paid are in a total amount less than (1) the accumulated contributions, and (2) other deposits made by the member as provided by this chapter, standing to the credit of the member at the time of retirement, then the difference between the total amount of the allowances paid and the accumulated contributions and other deposits shall be paid to the beneficiary provided under division (D) of section 145.43 of the Revised Code.

(D)(1) The death of a spouse or any designated beneficiary following retirement shall cancel the portion of the plan of payment providing continuing lifetime benefits to the deceased spouse or deceased designated beneficiary. The retirant shall receive the actuarial equivalent of the retirant's single lifetime benefit, as determined by the board, based on the number of remaining beneficiaries, with no change in the amount payable to any remaining beneficiary. The change shall be effective the month following receipt by the board of notice of the death.

(2) On divorce, annulment, or marriage dissolution, a retirant receiving a retirement allowance under a plan that provides for continuation of all or part of the allowance after death for the lifetime of the retirant's surviving spouse may, with the written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel the portion of the plan providing continuing lifetime benefits to that spouse. The retirant shall receive the actuarial equivalent of the retirant's single lifetime benefit as determined by the retirement board based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary. The election shall be made on a form provided by the board and shall be effective the month following its receipt by the board.

(E)(1) Following a marriage or remarriage, both of the following apply:

~~(1)(a)~~ A retirant who is receiving the retirant's retirement allowance under "plan B" may elect a new plan of payment under division (B)(1), (3)(b), or (3)(c) of this section based on the actuarial equivalent of the retirant's single lifetime benefit as determined by the board.

~~(2)(b)~~ A retirant who is receiving a ~~benefit~~ retirement allowance pursuant to a plan of payment providing for payment to a former spouse pursuant to a court order described in division (B)(1)(b)(ii) of this section may elect a new plan of payment under "plan F" based on the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the board if the new plan of payment elected does not reduce the payment to the former spouse.

~~The~~ (2) If the marriage or remarriage occurs on or after the effective date of this amendment, the election must be made not later than one year after the date of the marriage or remarriage.

The plan elected under this division shall become effective the first day of the month following on the date of receipt by the board of an application on a form approved by the board, but any change in the amount of the retirement allowance shall commence on the first day of the month following the effective date of the plan.

(F) Any person who, prior to July 24, 1990, selected an optional plan of payment at retirement that provided for a return to the single life benefit after the designated beneficiary's death shall have the retirant's benefit adjusted to the optional plan equivalent without such provision.

(G) A retirant's receipt of the first month's retirement allowance constitutes the retirant's final acceptance of the plan of payment and may be changed only as provided in this chapter.

**Sec. 742.3711.** (A) On application for retirement as provided in section 742.37 of the Revised Code, a member of the fund may elect to receive a retirement allowance payable throughout the member's life, or may elect, on the application for retirement, to receive the actuarial equivalent of the member's retirement allowance in a lesser amount payable for life and continuing after death to a surviving designated beneficiary under one of the following optional plans, provided the amount payable to the beneficiary shall not exceed the amount payable to the retiring member of the fund, and is certified by the actuary engaged by the board of trustees of the Ohio police and fire pension fund to be the actuarial equivalent of the member's retirement allowance and is approved by the board.

(1) Option 1. The member's lesser retirement allowance shall be paid for life to the sole beneficiary designated at the time of the member's retirement.

(2) Option 2. One-half or some other portion of the member's lesser retirement allowance shall be paid for life to the sole beneficiary designated at the time of the member's retirement.

(3) Option 3. Upon the member's death before the expiration of a certain period from the retirement date and elected by the member and approved by the retirement board, the member's lesser retirement allowance shall be continued for the remainder of that period to the beneficiary the member has nominated by written designation and filed with the retirement board.

Should the nominated beneficiary designated in writing become deceased prior to the expiration of the guarantee period, then for the purpose of completing payment for the remainder of the guarantee period, the present value of such payments shall be paid to the estate of the beneficiary last receiving.

(4) Option 4. The member's lesser retirement allowance or a portion of the lesser retirement allowance shall be paid for life to two, three, or four surviving beneficiaries designated at the time of the member's retirement, in such portions as specified at retirement. If the member elects this plan as required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property and compliance with the court order requires the allocation of a portion less than ten per cent to any beneficiary, the member shall allocate a portion less than ten per cent to that beneficiary in accordance with that order. In all other circumstances, no portion allocated under this plan of payment shall be less than ten per cent. The total of the portions allocated shall not exceed one hundred per cent of the member's lesser allowance.

(B)(1) The death of a spouse nominated as beneficiary or the death of any other nominated beneficiary following a member's retirement or election under section 742.44 of the Revised Code to participate in the deferred retirement option plan shall cancel the portion of the optional plan of payment providing continuing lifetime benefits to the deceased nominated beneficiary. The member of the fund shall receive the actuarial equivalent of the member's single lifetime benefit, as determined by the board, based on the number of remaining beneficiaries, with no change in the amount payable to any remaining beneficiary. The change shall be effective the month following receipt by the board of notice of the death.

(2) On divorce, annulment, or marriage dissolution, a member receiving a retirement allowance under a plan that provides for continuation of all or part of the allowance after death for the lifetime of the member's surviving spouse may, with the written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel the portion of the plan providing continuing lifetime benefits to that spouse. The member shall receive the actuarial equivalent of the member's single lifetime benefit as determined by the board based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary. The election shall be made on a form provided by the board and shall be effective the month following its receipt by the board.

(C)(1) Following marriage or remarriage, both of the following apply:



~~(1)~~(a) A member of the fund receiving a ~~pension~~retirement allowance under section 742.37 or 742.39 of the Revised Code may elect not later than one year after the date of marriage or remarriage a new optional plan of payment based on the actuarial equivalent of the member's single lifetime benefit as determined by the board.

~~(2)~~(b) If a member is receiving a ~~benefit~~retirement allowance pursuant to a plan of payment providing for payment to a former spouse pursuant to a court order described in division (D)(1)(c) of this section and the board has received a copy of the order described in that division, the member may elect a new plan of payment under "option 4" based on the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the board if the new plan of payment elected does not reduce the payment to the former spouse.

~~The~~(2) A plan elected under this division and the member's lesser retirement allowance shall become effective on the date ~~the election is made of receipt by the board of an application on a form approved by the board.~~

(D)(1) Unless one of the following occurs, an application for retirement by a married person shall be considered an election of a benefit under option 2 as provided for in division (A)(2) of this section under which one-half of the lesser retirement allowance payable during the life of the retirant will be paid after death to the retirant's spouse for life as sole beneficiary:

(a) The retirant selects an optional plan under division (A) of this section providing for payment after death to the retirant's spouse for life as sole beneficiary of more than one-half of the lesser retirement allowance payable during the life of the retirant;

(b) The retirant submits to the retirement board a written statement signed by the spouse attesting that the spouse consents to the retirant's election to receive a single lifetime retirement allowance or a payment under an optional benefit plan under which after the death of the retirant the surviving spouse will receive less than one-half of the lesser retirement allowance payable during the life of the retirant;

(c) A plan of payment providing for payment in a specified amount continuing after the retirant's death to a former spouse is required by a court order issued prior to the effective date of the retirant's retirement under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding division of marital property.

(d) If a retirant is subject to division (D)(1)(c) of this section and the board has received a copy of the order described in that division, the board shall accept the retirant's election of a plan of payment under this section only if the retirant complies with both of the following:

(i) The retirant elects a plan of payment that is in accordance with the order described in division (D)(1)(c) of this section.

(ii) If the retirant is married, the retirant elects "option 4" and designates

the retirant's current spouse as a beneficiary under that plan unless that spouse consents in writing to not being designated a beneficiary under any plan of payment or the board waives the requirement that the current spouse consent.

(2) An application for retirement shall include an explanation of all of the following:

(a) That, if the member is married, unless the spouse consents to another plan of payment or there is a court order dividing marital property issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property that provides for payment in a specified amount, the member's retirement allowance will be paid under "option 2" and consist of the actuarial equivalent of the member's retirement allowance in a lesser amount payable for life and one-half of the lesser allowance continuing after death to the surviving spouse for the life of the spouse;

(b) A description of the alternative plans of payment available with the consent of the spouse;

(c) That the spouse may consent to another plan of payment and the procedure for giving consent;

(d) That consent is irrevocable once notice of consent is filed with the board.

Consent shall be valid only if it is signed, in writing, and witnessed by an employee of the board or a notary public.

(3) If the retirant does not select an optional plan as described in division (D)(1)(a) of this section and the board does not receive the written statement provided for in division (D)(1)(b) of this section, it shall determine and pay the retirement allowance in accordance with division (A)(2) of this section, except that the board may provide by rule for waiver by the board of the statement and payment of the allowance other than in accordance with division (A)(2) of this section if the retirant is unable to obtain the statement due to absence or incapacity of the spouse or other cause specified by the board.

(E) A member of the fund who has elected an optional plan under this section or section 742.3715 of the Revised Code may, with the consent of the designated beneficiary, cancel the optional plan and receive the retirement allowance payable throughout life the member would have received had the member not elected the optional plan, if the member makes a request to cancel the optional plan not later than one year after the later of September 9, 1988, or the date on which the member first receives a payment under this section or section 742.3715 of the Revised Code. Cancellation of the optional plan shall be effective the month after acceptance of the request by the trustees of the fund. No payment or adjustment shall be made in the retirement allowance payable throughout the member's life to compensate for the lesser allowance the member received under the optional plan.

The request to cancel the optional plan shall be made on a form provided

by the fund and shall be valid only if the completed form includes a signed statement of the designated beneficiary's understanding of and consent to the cancellation. The signature shall be verified by the trustees of the fund prior to their acceptance of the cancellation.

(F) Any option elected and payments made under this section shall be in addition to any benefit payable under divisions (D), (E), and (F) of section 742.37 of the Revised Code.

(G) A person is eligible to receive a benefit increase under this division if the person is receiving a retirement allowance or benefit under an optional plan elected under this section or section 742.3715 of the Revised Code based on an award made prior to July 24, 1986. A person is not eligible to receive an increase under this division if the person is receiving a pension or benefit in accordance with rules in force on April 1, 1947, that govern the granting of pensions and benefits and that provide an increase in the original pension or benefit from time to time pursuant to changes in the salaries of active members.

The board shall annually increase all benefits payable under this section or section 742.3715 of the Revised Code to eligible persons by the actuarial equivalent of three hundred sixty dollars, except that no benefit shall exceed the limit established by section 415 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 415, as amended.

The first increase is payable to all eligible persons on July 1, 1988. The increase is payable for the ensuing twelve-month period or until the next increase is granted under this section, whichever is later.

The date of the first increase payable under this section shall be the anniversary date for future increases.

If payment of a portion of a benefit is made to an alternate payee under section 742.462 of the Revised Code, increases under this division granted while the order is in effect shall be apportioned between the alternate payee and the benefit recipient in the same proportion that the amount being paid to the alternate payee bears to the amount paid to the benefit recipient.

If payment of a portion of a retirement allowance is made to one or more beneficiaries under "option 4" under division (A)(4) of section 742.3711 of the Revised Code, each increase under this division granted while the plan of payment is in effect shall be divided among the designated beneficiaries in accordance with the portion each beneficiary has been allocated.

**Sec. 3307.60.** (A) Upon application for retirement as provided in section 3307.58 or 3307.59 of the Revised Code, the retirant may elect a plan of payment under this division or, on and after the date specified in division (B) of this section, a plan of payment under that division. Under this division, the retirant may elect to receive a single lifetime benefit, or may elect to receive the actuarial equivalent of the retirant's benefit in a lesser amount, payable for life, and continuing after death to a beneficiary under one of the following optional

plans:

(1) Option 1. The retirant's lesser benefit shall be paid for life to the sole beneficiary named at retirement.

(2) Option 2. Some other portion of the retirant's benefit shall be paid for life to the sole beneficiary named at retirement. The beneficiary's monthly amount shall not exceed the monthly amount payable to the retirant during the retirant's lifetime.

(3) Option 3. The retirant's lesser benefit established as provided under option 1 or option 2 shall be paid for life to the sole beneficiary named at retirement, except that in the event of the death of the sole beneficiary or termination of a marital relationship between the retirant and the sole beneficiary the retirant may elect to return to a single lifetime benefit equivalent as determined by the state teachers retirement board, if, in the case of termination of a marital relationship, the election is made with the written consent of the beneficiary or pursuant to an order of the court with jurisdiction over termination of the marital relationship.

(4) Option 4. The retirant's lesser benefit or a portion of the retirant's lesser benefit shall be paid for life to two, three, or four surviving beneficiaries named at retirement. The portion of the allowance that continues after the member's death shall be allocated among the beneficiaries at the time of the member's retirement. If the retirant elects this plan as required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property and compliance with the court order requires the allocation of a portion less than ten per cent to any person, the retirant shall allocate a portion less than ten per cent to that beneficiary in accordance with that order. In all other circumstances, no portion allocated under this plan of payment shall be less than ten per cent. The total of the portions allocated shall not exceed one hundred per cent of the retirant's lesser allowance.

(5) Option 5. Upon the retirant's death before the expiration of a certain period from the retirement date and elected by the retirant, and approved by the board, the retirant's benefit shall be continued for the remainder of such period to the beneficiary. Monthly benefits shall not be paid to joint beneficiaries, but they may receive the present value of any remaining payments in a lump sum settlement. If all beneficiaries die before the expiration of the certain period, the present value of all payments yet remaining in such period shall be paid to the estate of the beneficiary last receiving.

(6) Option 6. A plan of payment established by the state teachers retirement board combining any of the features of options 1, 2, and 5.

(B) Beginning on a date selected by the state teachers retirement board, which shall be not later than July 1, 2004, a retirant may elect, in lieu of a plan of payment under division (A) of this section, a plan consisting of both of the following:

- (1) A lump sum in an amount the member designates that constitutes a portion of the member's single lifetime benefit;
- (2) Either of the following:
  - (a) The remainder of the retirant's single lifetime benefit;
  - (b) The actuarial equivalent of the remainder of the retirant's benefit in a lesser amount, payable for life, and continuing after death to a beneficiary under one of the options described in divisions (A)(1) to (6) of this section.

In the event of the death of a beneficiary or termination of a marital relationship between the retirant and a beneficiary, the retirant may elect to cancel the portion of the plan of payment providing continuing lifetime benefits to that beneficiary. The retirant shall receive the actuarial equivalent of the remainder of the retirant's single lifetime benefit based on the number of remaining beneficiaries, with no change in the amount payable to any remaining beneficiary. In the case of termination of a marital relationship, the election may be made only with the written consent of the beneficiary or pursuant to an order of the court with jurisdiction over termination of the marital relationship.

The amount designated by the member under division (B)(1) of this section shall be not less than six times and not more than thirty-six times the monthly amount that would be payable to the member as a single lifetime benefit and shall not result in a monthly allowance that is less than fifty per cent of that amount.

(C) Until the first payment is made to a former member under section 3307.58 or 3307.59 of the Revised Code, the former member may change the selection of a plan of payment.

(D)(1) If a deceased member was eligible for but had not yet been awarded a service retirement benefit under section 3307.58 or 3307.59 of the Revised Code at the time of death, option 1 as provided for in division (A)(1) of this section shall be paid to the spouse or other sole dependent beneficiary.

(2) Beginning on a date selected by the board, which shall be not later than July 1, 2004, the spouse or sole beneficiary may elect, in lieu of option 1, a plan of payment consisting of both of the following:

(a) A lump sum in an amount the spouse or other sole dependent beneficiary designates that constitutes a portion of the retirant's single life annuity;

(b) The actuarial equivalent of the remainder of the retirant's single life annuity paid in a lesser amount for life to the spouse or other sole dependent beneficiary.

The amount designated by the spouse or other sole dependent beneficiary under division (D)(2)(a) of this section shall be not less than six times and not more than thirty-six times the monthly amount that would be payable as the retirant's single life annuity and shall not result in a monthly allowance that is

less than fifty per cent of that monthly amount.

(E) If the total benefit paid under this section is less than the balance in the teachers' savings fund, the difference shall be paid to the beneficiary provided under division (D) of section 3307.562 of the Revised Code.

(F) In the case of a retirant who elected an optional plan prior to September 15, 1989:

(1) The death of the spouse or other designated beneficiary following retirement shall, at the election of the retirant, cancel any optional plan selected at retirement to provide continuing lifetime benefits to the spouse or other beneficiary and return the retirant to a single lifetime benefit equivalent as determined by the board.

(2) A divorce, annulment, or marriage dissolution shall, at the election of the retirant, cancel any optional plan selected at retirement to provide continuing lifetime benefits to the spouse as designated beneficiary and return the retirant to a single lifetime benefit equivalent as determined by the board if the election is made with the written consent of the beneficiary or pursuant to an order of a court of common pleas or the court of another state with jurisdiction over the termination of the marriage.

(G)(1) Following marriage or remarriage, both of the following apply:

~~(1)~~(a) A retirant may elect a new optional plan of payment based on the actuarial equivalent of the retirant's single lifetime benefit, as determined by the board, except that if the retirant is receiving a retirement allowance under an optional plan that provides for continuation of benefits after death to a former spouse, the retirant may elect a new optional plan of payment only with the written consent of the former spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage.

~~(2)~~(b) A retirant who is receiving a benefit pursuant to a plan of payment providing for payment to a former spouse pursuant to a court order described in division (H)(1)(b) of this section may elect a new plan of payment under "option 4" based on the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the board if the new plan of payment elected does not reduce the payment to the former spouse.

~~The~~(2) If the marriage or remarriage occurs on or after the effective date of this amendment, the election must be made not later than one year after the date of the marriage or remarriage.

The plan elected under this division shall become effective on the first date of the month following receipt by the board of an application on a form approved by the board, but any change in the amount of the benefit shall commence on the first day of the month following the effective date of the plan.

(H)(1) Except as otherwise provided in this division and division (H)(2) of this section, an application for service retirement made pursuant to section

3307.58 or 3307.59 of the Revised Code by a married person shall be considered an election of a benefit under option 2 as provided for in division (A)(2) of this section under which one-half of the lesser benefit payable during the life of the retirant will be paid after death to the retirant's spouse for life as sole beneficiary. The exceptions are as follows:

(a) The retirant selects an optional plan under division (A) of this section providing for payment after death to the retirant's spouse for life as sole beneficiary of more than one-half of the lesser benefit payable during the life of the retirant.

(b) A plan of payment providing for payment in a specified amount continuing after the retirant's death to a former spouse is required by a court order issued prior to the effective date of retirement under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding division of marital property.

(c) The retirant submits to the retirement board a written statement signed by the spouse attesting that the spouse consents to the retirant's election to receive a single lifetime annuity or a payment under an optional benefit plan under which after the death of the retirant the surviving spouse will receive less than one-half of the lesser benefit payable during the life of the retirant.

(2) If a retirant is subject to division (H)(1)(b) of this section and the board has received a copy of the order described in that division, the board shall accept the retirant's election of a plan of payment under this section only if the retirant complies with both of the following:

(i) The retirant elects a plan of payment that is in accordance with the order described in division (H)(1)(b) of this section.

(ii) If the retirant is married, the retirant elects "option 4" and designates the retirant's current spouse as a beneficiary under that plan unless that spouse consents in writing to not being designated a beneficiary under any plan of payment or the board waives the requirement that the current spouse consent.

(3) An application for retirement shall include an explanation of all of the following:

(a) That, if the member is married, unless the spouse consents to another plan of payment or there is a court order dividing marital property issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property that provides for payment in a specified amount, the member's retirement allowance will be paid under "option 2" as provided for in division (A)(2) of this section and consist of the actuarial equivalent of the member's retirement allowance in a lesser amount payable for life and one-half of the lesser allowance continuing after death to the surviving spouse for the life of the spouse;

(b) A description of the alternative plans of payment available with the consent of the spouse;

(c) That the spouse may consent to another plan of payment and the procedure for giving consent;

(d) That consent is irrevocable once notice of consent is filed with the board.

Consent shall be valid only if it is signed, in writing, and witnessed by a notary public.

(4) If the retirant does not select an optional plan of payment as described in division (H)(1)(a) of this section, no court has ordered a plan of payment described in division (H)(1)(b) of this section, and the board does not receive the written statement provided for in division (H)(1)(c) of this section, the board shall determine and pay the retirement allowance in accordance with this division, except that the board may provide by rule for waiver by the board of the statement and payment of the benefits other than in accordance with this division or payment under section 3307.56 of the Revised Code if the retirant is unable to obtain the statement due to absence or incapacity of the spouse or other cause specified by the board.

(I) For the purpose of determining actuarial equivalence under this section, on the advice of an actuary employed by the board, the board shall adopt mortality tables that may take into consideration the membership experience of the state teachers retirement system and may also include the membership experience of the public employees retirement system and the school employees retirement system.

**Sec. 3309.46.** (A) The retirement allowance calculated under section 3309.36, 3309.38, or 3309.381 of the Revised Code shall be paid as provided in this section. If the member is eligible to elect a plan of payment under this section, the election shall be made on the application for retirement. A plan of payment elected under this section shall be effective only if it is certified by the actuary engaged by the school employees retirement board to be the actuarial equivalent of the member's retirement allowance and is approved by the retirement board.

(B)(1)(a) Except as provided in divisions (B)(1)(b) and (c) of this section, a member who retires under section 3309.36, 3309.38, or 3309.381 of the Revised Code shall receive a retirement allowance under "plan A," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 3309.36, 3309.38, or 3309.381 of the Revised Code in a lesser amount payable for life and one-half of such allowance continuing after death to the member's surviving spouse for the life of the spouse.

(b) A member may receive a retirement allowance under a plan of payment other than "plan A" if either of the following is the case:

(i) The member is not married or either the member's spouse consents in writing to the member's election to a plan of payment other than "plan A" or the board waives the requirement that the spouse consent;



(ii) A plan of payment providing for payment in a specified amount continuing after the member's death to a former spouse is required by a court order issued prior to the effective date of the member's retirement under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding division of marital property.

(c) If a member is subject to division (B)(1)(b)(ii) of this section and the board has received a copy of the order described in that division, the board shall accept the member's election of a plan of payment under this section only if the member complies with both of the following:

(i) The member elects a plan of payment that is in accordance with the order described in division (B)(1)(b)(ii) of this section.

(ii) If the member is married, the member elects "plan F" and designates the member's current spouse as a beneficiary under that plan unless that spouse consents in writing to not being designated a beneficiary under any plan of payment or the board waives the requirement that the current spouse consent.

(2) An application for retirement shall include an explanation of all of the following:

(a) That, if the member is married, unless the spouse consents to another plan of payment or there is a court order dividing marital property issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property that provides for payment in a specified amount, the member's retirement allowance will be paid under "plan A," which consists of the actuarial equivalent of the member's retirement allowance in a lesser amount payable for life and one-half of the allowance continuing after death to the surviving spouse for the life of the spouse;

(b) A description of the alternative plans of payment, including all plans described in divisions (B)(3) and (4) of this section, available with the consent of the spouse;

(c) That the spouse may consent to another plan of payment and the procedure for giving consent;

(d) That consent is irrevocable once notice of consent is filed with the board.

Consent shall be valid only if it is in writing, signed by the spouse, and witnessed by an employee of the school employees retirement system or a notary public. The board may waive the requirement of consent if the spouse is incapacitated or cannot be located or for any other reason specified by the board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

(3)(a) A member eligible to elect to receive a retirement allowance under a plan of payment other than "plan A" shall receive the retirement allowance under the plan described in division (B)(4) of this section or one of the following

plans:

(a) "Plan B," which shall consist of an allowance determined under section 3309.36, 3309.38, or 3309.381 of the Revised Code;

(b) "Plan C," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 3309.36, 3309.38, or 3309.381 of the Revised Code in a lesser amount payable for life and one-half or some other portion of the allowance continuing after death to the member's sole surviving beneficiary designated at the time of the member's retirement, provided that the amount payable to the beneficiary does not exceed the amount payable to the member;

(c) "Plan D," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 3309.36, 3309.38, or 3309.381 of the Revised Code in a lesser amount payable for life and continuing after death to a surviving designated beneficiary designated at the time of the member's retirement;

(d) "Plan E," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 3309.36, 3309.38, or 3309.381 of the Revised Code in a lesser amount payable for a certain period from the member's retirement date as elected by the member and approved by the retirement board, and on the member's death before the expiration of that certain period, the member's lesser retirement allowance continued for the remainder of that period to, and in such order, the beneficiaries as the member has nominated by written designation and filed with the retirement board.

Monthly benefits shall not be paid to joint beneficiaries, but they may receive the present value of any remaining payments in a lump sum settlement. If all beneficiaries die before the expiration of the certain period, the present value of all such payments yet remaining in such period shall be paid to the estate of the beneficiary last receiving.

(e) "Plan F," which shall consist of the actuarial equivalent of the member's retirement allowance determined under section 3309.36, 3309.38, or 3309.381 of the Revised Code in a lesser amount payable to the member for life and some portion of the lesser amount continuing after death to two, three, or four surviving beneficiaries designated at the time of the member's retirement. The portion of the lesser amount that continues after the member's death shall be allocated among the beneficiaries at the time of the member's retirement. If the member elects this plan as required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property and compliance with the court order requires the allocation of a portion less than ten per cent to any person, the member shall allocate a portion less than ten per cent to that beneficiary in accordance with that order. In all other circumstances, no portion allocated under this plan of payment shall be less than ten per cent. The total of the portions allocated shall not exceed one hundred per cent of the member's lesser allowance.

(4)(a) Beginning on a date selected by the board, which shall be not later than July 1, 2004, a member may elect, in lieu of a plan of payment under division (B)(1) or (3) of this section, a plan consisting of both a lump sum in an amount the member designates that constitutes a portion of the retirement allowance payable under a plan described in division (B)(1) or (3) of this section and the remainder of the allowance payable under that plan in monthly payments.

The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

(b) The lump sum amount designated by the member shall be not less than six times and not more than thirty-six times the monthly amount that would be payable to the member under the plan of payment elected under this section had the lump sum not been elected and shall not result in a monthly benefit that is less than fifty per cent of that amount.

(5) An election under division (B)(3) or (4) of this section shall be made at the time the member makes application for retirement.

(6) A member eligible to elect to receive a retirement allowance under a plan of payment other than "plan A" because the member is unmarried who fails to make an election on retirement shall receive a retirement allowance under "plan B."

(C) Until the first payment of any retirement allowance is made, as provided in sections 3309.36, 3309.38, or 3309.381 of the Revised Code, a member may change the member's election of a payment plan if the election is made in accordance with and is consistent with division (B) of this section.

(D) If the retirement allowances due and paid under the above provisions of this section are in a total amount less than (1) the accumulated contributions, (2) the deposits for additional credit as provided by section 3309.31 of the Revised Code, (3) the deposits for additional annuities as provided by section 3309.47 of the Revised Code, (4) the deposits for repurchase of service credit as provided by section 3309.26 of the Revised Code, (5) the accumulated contributions provided by section 3309.65 of the Revised Code, (6) the deposits for purchase of military service credit provided by section 3309.021 or 3309.022 of the Revised Code, and (7) the deposits for the purchase of service credit provided by section 3309.73 of the Revised Code, standing to the credit of the member at the time of retirement, then the difference between the total amount of the allowances paid and the accumulated contributions and other deposits shall be paid to the beneficiary provided under division (D) of section 3309.44 of the Revised Code.

(E)(1) The death of a spouse or any other designated beneficiary following the member's retirement shall cancel the portion of the plan of payment providing continuing lifetime benefits to the deceased spouse or deceased designated beneficiary. The retirant shall receive the actuarial

equivalent of the retirant's single lifetime retirement allowance as determined by the board based on the number of remaining beneficiaries, with no change in the amount payable to any remaining beneficiary.

(2) On divorce, annulment, or marriage dissolution, a retirant receiving a retirement allowance under a plan of payment that provides for continuation of all or part of the allowance after death for the lifetime of the retirant's surviving spouse may elect to cancel the portion of the plan providing continuing lifetime benefits to that spouse. The retirant shall receive the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the retirement board based on the number of remaining beneficiaries, with no change in the amount payable to any remaining beneficiary. In the case of a member who retires on or after July 24, 1990, the election may be made only with the written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage. The election shall be made on a form provided by the board and shall be effective the month following its receipt by the board.

(3)(a) Following marriage or remarriage, both of the following apply:

~~(a)~~(i) A retirant who is receiving a benefit pursuant to "plan B" may elect a new plan of payment under division (B)(1), (3)(b), or (3)(c) of this section based on the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the board.

~~(b)~~(ii) A retirant who is receiving a benefit pursuant to a plan of payment providing for payment to a former spouse pursuant to a court order described in division (B)(1)(b)(ii) of this section may elect a new plan of payment under division (B)(3)(e) of this section based on the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the board if the new plan of payment elected does not reduce the payment to the former spouse.

~~The (b) If the marriage or remarriage occurs on or after the effective date of this amendment, the election must be made not later than one year after the date of the marriage or remarriage.~~

~~The plan elected under division (E)(3) of this section shall become effective on the first day date of the month following receipt by the board of an application on a form approved by the board, but any change in the amount of the retirement allowance shall commence on the first day of the month following the effective date of the plan.~~

**Sec. 5505.162.** (A) On application for retirement as provided in section 5505.16 of the Revised Code, a member of the state highway patrol retirement system may elect, on a form provided by the state highway patrol retirement board, to receive the pension that the member is eligible to receive on retirement under that section in one of the following forms:

(1) A single lifetime pension;

(2) The actuarial equivalent of the single lifetime pension that the member may elect under division (A)(1) of this section in a lesser annual amount

payable for the member's life and continuing after the member's death to a surviving designated beneficiary under one of the following optional plans, provided the annual amount payable to the designated beneficiary shall not exceed the annual amount payable to such retiring member, the amount is certified by the actuary employed by the system to be the actuarial equivalent of the member's pension, and the amount is approved by the board:

(a) Option 1. The member's lesser pension shall be paid for life to the member's sole beneficiary designated at the time of retirement.

(b) Option 2. One-half or some other portion of the member's lesser pension shall be paid for life to the member's sole beneficiary designated at the time of retirement.

(c) Option 3. Upon death before the expiration of a certain period from the member's retirement date as elected by the member and approved by the board, the member's lesser pension shall be continued for the remainder of such period to the beneficiaries, and in such order, as designated by the member in writing and filed with the board. No monthly payments shall be paid to joint beneficiaries, but they may jointly receive the present value of any remaining payments in a lump sum settlement. If all designated beneficiaries die before the expiration of such period, the present value of all the payments yet remaining in the period shall be paid to the estate of the beneficiary last receiving such payments.

(d) Option 4. The member's lesser pension or portion of the lesser pension shall be paid for life to two, three, or four surviving beneficiaries designated at the time of the member's retirement, in such portions as specified at retirement. If the member elects this plan as required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding the division of marital property and compliance with the court order requires the allocation of a portion less than ten per cent to any person, the member shall allocate a portion less than ten per cent to that person in accordance with that order. In all other circumstances, no portion allocated under this plan of payment shall be less than ten per cent. The total of the portions allocated shall not exceed one hundred per cent of the member's lesser pension.

(3) If the member has attained age fifty-one with at least twenty-five years' total service or fifty-two with at least twenty years' total service, a pension consisting of both a partial benefit lump sum in an amount the member designates that constitutes a portion of the single lifetime pension the member may elect under division (A)(1) of this section and the actuarial equivalent of the remainder of the single lifetime pension payable for the member's life, provided an actuary employed by the system certifies the actuarial equivalent and the board approves the partial benefit lump sum payment and the amount to be paid as the actuarial equivalent.

The amount designated by a member shall be not less than six times the monthly amount that would be payable to the member as a single lifetime

pension under division (A)(1) of this section and not more than sixty times that amount.

A member who has attained the age of fifty-one with twenty-five years of service who elects a partial benefit lump sum may designate an amount that does not exceed an amount equal to one month's pension for each month of service beyond twenty-five years. A member who has attained the age of fifty-two with twenty years of service who elects a partial benefit lump sum may designate an amount that does not exceed an amount equal to one month's pension for each month of service beyond twenty years.

(4) If a plan of payment providing for payment in a specified portion of the pension continuing after the member's death to a former spouse is required by a court order issued under section 3105.171 or 3105.65 of the Revised Code or the laws of another state regarding division of marital property prior to the effective date of the member's retirement and the board has received a copy of the order, the board shall accept the member's election of a plan of payment under this section only if the member elects a plan of payment that is in accordance with the order.

(B)(1) The death of a spouse designated as beneficiary or the death of any other designated beneficiary following retirement shall cancel the portion of the optional plan of payment selected under division (A)(2) of this section providing continuing lifetime benefits to the deceased designated beneficiary. The member shall receive the actuarial equivalent of the member's single lifetime pension, as determined by the board based on the number of remaining beneficiaries, with no change in the amount payable to any remaining beneficiary. The change shall be effective the month following receipt by the board of notice of the death.

(2) On divorce, annulment, or marriage dissolution, a member receiving a pension under a plan that provides for continuation of all or part of the pension after death for the lifetime of the member's surviving spouse may, with the written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel the portion of the plan providing continuing lifetime benefits to that spouse. The member shall receive the actuarial equivalent of the member's single lifetime pension as determined by the board based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary. The election shall be made on a form provided by the board and shall be effective the month following its receipt by the board.

(C)(1) Following marriage or remarriage, both of the following apply:

~~(1)~~(a) A member may elect a new optional plan of payment under division (A)(2) of this section based on the actuarial equivalent of the member's single lifetime pension as determined by the board.

~~(2)~~(b) A member who is receiving a pension pursuant to a plan of payment providing for payment to a former spouse pursuant to a court order described in division (A)(4) of this section may elect a new plan of payment

under "option 4" based on the actuarial equivalent of the retirant's single lifetime pension as determined by the board if the new plan of payment elected does not reduce the payment to the former spouse.

The(2) If the marriage or remarriage occurs on or after the effective date of this amendment, the election must be made not later than one year after the date of the marriage or remarriage.

The plan elected under this section shall become effective on the first daydate of the month following receipt by the board of an application on a form approved by the board, but any change in the amount of the pension shall commence on the first day of the month following the effective date of the plan.

(D) A member who has elected an optional plan under division (A)(2) of this section may, with the written consent of the designated beneficiary, cancel the optional plan and receive the single lifetime pension that the member would have received had the member elected the single lifetime pension under division (A)(1) of this section, if the member makes a request to cancel the optional plan not later than one year after the date on which the member first receives a payment under the plan. Cancellation of the optional plan shall be effective the month after acceptance of the request by the board. No payment or adjustment shall be made in the single lifetime pension to compensate for the lesser pension the member received under the optional plan.

The request to cancel the optional plan shall be made on a form provided by the board and shall be valid only if the completed form includes a signed statement of the designated beneficiary's understanding of and consent to the cancellation. The designated beneficiary's signature shall be verified by the board prior to its acceptance of the cancellation.

(E) Any option elected and payments made under division (A)(2) of this section shall be in addition to any pension payable to the member's surviving spouse, children, or parents under section 5505.17 of the Revised Code.

**Section 4.** That the existing versions of sections 145.46, 742.3711, 3307.60, 3309.46, and 5505.162 of the Revised Code that are scheduled to take effect on October 27, 2006, are hereby repealed.

**Section 5.** Sections 3 and 4 of this act shall take effect October 27, 2006.

**Section 6.** The individual appointed by the Governor pursuant to Section 5 of Sub. S.B. 133 of the 125th General Assembly to serve as the additional retirant member of the Board of the School Employees Retirement System shall hold office through June 30, 2005.

With regard to the vacancy left on the School Employees Retirement Board by the employee member whose term would have ended on June 5, 2005, the individual elected by the Board to fill the vacant employee member seat shall hold office through June 30, 2005.

**Section 7.** Sections 1 and 2 of this act shall take effect on the ninety-first day after the effective date of this act.

**Section 8.** This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that, to provide consistent governance of the School Employees Retirement System, the continuity of the membership of the School Employees Retirement Board must be maintained. Therefore, this act shall go into immediate effect."

The question being, "Shall the motion be agreed to?"

The motion was agreed to.

The question being, "Shall the section, Section 8, setting forth the emergency features of the bill, stand as a part of the bill?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Harris
Hottinger	Jacobson	Jordan	Mallory
Miller	Mumper	Niehaus	Padgett
Prentiss	Roberts	Schuler	Schuring
Spada	Wachtmann	Wilson	Zurz-32.

So the section, Section 8, setting forth the emergency features of the bill stood as a part of the bill.

The question being, "Shall the bill pass as an emergency measure?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Harris
Hottinger	Jacobson	Jordan	Mallory
Miller	Mumper	Niehaus	Padgett
Prentiss	Roberts	Schuler	Schuring
Spada	Wachtmann	Wilson	Zurz-32.

So the bill having received the required constitutional majority passed as an emergency measure.

The question being, "Shall the title be agreed to?"

Senator Wachtmann moved to amend as follows:

In line 6 of the title, after "paid" insert ", to amend the versions of sections 145.46, 742.3711, 3307.60, 3309.46, and 5505.162 of the Revised Code that are scheduled to take effect on October 27, 2006, to continue provisions of



this act on and after that effective date, and to declare an emergency"

The question being, "Shall the motion be agreed to?"

The motion was agreed to.

The question recurred, "Shall the title be agreed to?"

Senator Wachtmann moved to amend the title as follows:

Add the names: "Clancy, Hottinger, Niehaus, Schuring, Cates."

The question being, "Shall the motion be agreed to?"

The motion was agreed to and the title so amended.

### **INTRODUCTION AND FIRST CONSIDERATION OF BILLS**

The following bills were introduced and considered the first time:

**S. B. No. 80**-Senators Dann, Fingerhut, Zurz, Wilson, Hagan.

To amend sections 5727.45, 5727.84, 5733.12, 5739.21, 5741.03, and 5747.03 and to enact sections 9.27, 9.271, 9.272, 9.273, 9.274, 9.275, 9.276, 9.277, 9.278, and 9.279 of the Revised Code, and to repeal section 139 of Am. Sub. H. B. 95 of the 125th General Assembly to provide financial incentives to encourage counties, townships, and municipal corporations to save money through expenditure reductions and consolidation of services.

**S. B. No. 81**-Senator Armbruster.

To amend sections 4141.01, 4141.11, 4141.131, 4141.24, 4141.242, 4141.25, 4141.26, 4141.28, 4141.282, 4141.283, 4141.29, 4141.301, 4141.31, 4141.312, and 4141.99, to enact sections 4141.292 and 4141.48, and to repeal section 4141.311 of the Revised Code to conform state law to federal requirements in the establishment of civil and criminal penalties for manipulating payroll and business transfer information to obtain lower contribution rates and in the treatment of Indian tribes as employers, to establish a state disaster unemployment benefit payment to pay the first week of an individual's unemployment caused by a major disaster, to make changes involving the appeal process for claims under the unemployment compensation law, and to make various changes in the administration of the unemployment compensation law.

**S. B. No. 82**-Senators Grendell, Jacobson, Brady.

To enact section 9.481 of the Revised Code to generally prohibit political subdivisions from imposing residency requirements on certain employees.

**S. B. No. 83**-Senators Grendell, Clancy, Jacobson, Schuring.

To amend sections 319.302, 321.24, 323.156, 4503.06, 5733.06, 5733.33, 5747.02, and 5747.31 and to enact sections 319.312 and 5705.031 of the Revised Code to create a property tax credit for the purchase of new manufacturing machinery and equipment and to reimburse local governments for tax revenues foregone by them as a result of the credit.

**S. B. No. 84**-Senators Mallory, Brady, Dann, Fedor, Miller.

To create the Hybrid Vehicle Acquisition Study Committee for the purpose of studying the feasibility of replacing the existing state motor vehicle fleet over time with hybrid vehicles.

### OFFERING OF RESOLUTIONS

Pursuant to Senate Rule No. 54, the following resolutions were offered:

**S. R. No. 31**-Senators Miller, Zurz, Wachtmann, Prentiss, Fingerhut, Wilson, Dann, Gardner, Hagan, Jacobson, Brady.

Honoring Kevin Boyle as the recipient of the 2004 National Book Award for nonfiction.

**S. R. No. 32**-Senator Brady.

Recognizing Youth Art Month, March 2005.

**S. R. No. 33**-Senator Hagan.

Honoring the Youngstown Window Cleaning Company on its One Hundredth Anniversary.

**S. R. No. 34**-Senators Harris, Schuring, Fedor, Wachtmann, Spada, Grendell, Niehaus, Gardner, Mumper, Armbruster, Coughlin, Carey, Padgett, Jacobson, Goodman, Miller, Clancy, Austria, Schuler.

Honoring Mary Lynn Readey for outstanding service to the State of Ohio.

The question being, "Shall the resolutions listed under the President's prerogative be adopted?"

So the resolutions were adopted.

Senator Mallory offered the following resolution:

**S. R. No. 35**-Senators Mallory, Brady, Dann, Fedor, Miller.

To memorialize Congress to amend the Energy Policy Act of 1992 to specify that an electric-hybrid vehicle must receive credit as being an alternative fueled vehicle for purposes of the requirement that 75% of new light duty motor vehicles acquired annually for state government fleets be alternative fueled vehicles.

The question being, "Shall the resolution, **S. R. No. 35**, be adopted?"

On motion of Senator Jacobson, **S. R. No. 35**, was referred to the Committee on Reference.

### MESSAGE FROM THE PRESIDENT

Pursuant to Sub. S.B. No. 161 of the 123rd General Assembly, the President of the Senate appoints Senator Gardner to serve on the Rules Advisory Committee.

Pursuant to Section 3333.41 (2) of the Ohio Revised Code, the President of the Senate appoints Senator Coughlin to serve on the Midwestern Higher Education Commission.

Pursuant to Section 122.72 (B) of the Ohio Revised Code, the President of the Senate appoints Senator Austria to serve on the Minority Development Financing Advisory Board.

Pursuant to Section 3333.01 of the Ohio Revised Code, the President of the Senate appoints Senator Padgett (Chair of the Senate Education Committee) to serve as an ex-officio member of the Ohio Board of Regents.

Pursuant to Section 3734.51 of the Ohio Revised Code, the President of the Senate appoints Senator Niehaus (Chair of the Senate Environment and Natural Resources Committee) to serve on the Solid Waste Management Advisory Council.

Pursuant to Section 5902.15 (B) of the Ohio Revised Code, the President of the Senate appoints the following members to serve on the Military Activation Task Force:

Senator Coughlin (as Chair of the State and Local Government and Veterans' Affairs Committee)

Senator Brady (as Ranking Minority Member of the State and Local Government and Veterans' Affairs Committee)

Pursuant to Section 3 (A) of Sub. H.B. No. 204 of the 125th General Assembly, the President of the Senate appoints the following members to serve on the Ohio Privacy/Public Record Access Study Committee:

Senator Austria (Co-Chairman)  
Senator Coughlin  
Senator Dann

Pursuant to Section 3701.92 of Am. Sub. H.B. No. 94 of the 124th General Assembly, the President of the Senate appoints the following senators to serve on the Ohio Hepatitis C Advisory Commission:

Senator Wachtmann  
Senator Hagan

Pursuant to Section 101.39 of the Ohio Revised Code, the President of the Senate appoints the following senators to serve on the Joint Legislative Committee on Health Care Oversight:

Senator Wachtmann (as Chair of the Senate Health Committee)  
Senator Clancy  
Senator Jordan  
Senator Hagan  
Senator Miller

Pursuant to Section 41.35 (A) of Am. Sub. H.B. No. 95 of the 125th General Assembly, the President of the Senate appoints the following senators to serve on the Head Start Partnership Study Council:

Senator Padgett  
Senator Cates  
Senator Miller

On the motion of Senator Jacobson, the Senate adjourned until Wednesday, March 2, 2005 at 1:30 p.m.

Attest:

MATTHEW T. SCHULER,  
Clerk.